

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

CRP.No. 741 of 2005()

AGAINST THE ORDER DATED 06/12/2004 IN IA 8647/04 IN
OS.2452/1990 of I ADDL.M.C., TRIVANDRUM
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REVN. PETITIONERS/PLAINTIFFS

1. J.SAROJINI ALIAS NESAMMA,
RESIDING IN HOUSE NO.8 HAVING PANCHAYATH
NO.VP IX/204, KAVUVILA, LEKSHAM VEEDU COLONY,
CHANTHAMUKKU PEYAD, VILAVOORKKAL VILLAGE,
THIRUVANANTHAPURAM.

2. SAROJINI AMBIKA, DO. DO.

3. P.S.JANATHAKUMAR, DO. DO.

BY ADV. SRI.M.RAMASWAMY PILLAI
SRI.A.CHANDRASEKHARAN NAIR
SRI.P.M.JOSEPH

RESPONDENTS/DEFENDANTS

1. NARAYANI SAROJINI, RESIDING AT
NATTARATHALAKKAL VEEDU, KURUSUMUTTAM,
PEYAD, VILAVOORKKAL VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

2. GIRIJA, D/O.SAROJINI, DO.

3. SHAJU, S/O. SAROJINI, DO.

4. SHEELA, D/O.SAROJINI, DO.

5. BINDU, S/O.SAROJINI, DO.

6. BINU, S/O.SAROJINI, DO.

7. SHIBU, S/O.SAROJINI, DO.

BY

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007,
THE COURT ON 20/11/2007 PASSED THE FOLLOWING:

HARUN-UL-RASHID, J.

C.R.P No. 741 of 2005

Dated this the 20th day of November 2007

ORDER

This revision petition is filed by the plaintiffs in O.S. 2452/1990 who are aggrieved by the order passed by the Court below in an application filed by them under Section 152 of the C.P.C for correction of certain mistakes which had crept in the description of the property scheduled to the plaint and so in the decree.

2. According to the revision petitioners the survey number of the scheduled property shown in the plaint was a mistake and all other entries are correct. The survey number alone had been wrongly described but this wrong description did not in any way affect the identity of the property. The only question which arises for consideration is whether on the facts the application for amendment is allowable by invoking the jurisdiction of this Court under Section 152 of the C.P.C. Section 152 reads as follows:

"Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. "

3. The question as to the powers of the Court under Section 152 of the C.P.C. to amend the errors in a decree although the error may

have first occurred in the parties' pleadings and may have been merely copied from them in the decree has been the subject matter of some diversity of Judicial opinion. Thus when there is an error in the description of mortgaged property owing to the accidental use of the word 'west' for 'east' as dealt with in the decision reported in **Raghulghani Vs. Uma Shenkar A.I.R. 1944 Oudh 5** and the insertion of wrong survey number as examined in **Satyanarayana Vs, Purnayya A.I.R. 1931 Madras 260** and such error is repeated in the plaint and the decree, the court has been held to have ample powers to rectify the error As Pandalai, Justice observed in the Madras case just cited

" There is nothing which limits the power of the court under Section 152 to correcting errors, mistakes and omissions, which arise in the suit. Nothing prevents the court from doing justice in an appropriate case where such mistakes arose by reason of copying an erroneous document into the plaint. A suit for rectification of the instrument and decree is not the only remedy; an application for review may be appropriate, but that is no obstacle under Section 152 to an application"

4. In the later case before the Madras High Court in **Krishna Poduval Vs. Lekshmi Nathiar A.I.R. 1950 Madras 751** the prayer was for amendment of the survey number of an item of property in the plaint schedule and the decree schedule when there was no dispute as regards the identity of the property or boundaries to it and the amendment was allowed under Section 152. Discussing the matter the learned Judge held:

" I do not think therefore that the amendment asked for goes to the root of the claim or an amendment is sought for in

respect of any matter which has been a subject of controversy between the parties to the suit. It is only an amendment for correction of certain errors that have crept into the decree and in the plaint schedule which errors happen to be also in Ext.B-1 (Original document). The fact that Ext.B1 also has the same errors as in the plaint schedule and in the schedule to the decree cannot disentitle the plaintiff's to have the errors set right if they are entitled to it under the provisions of the Code. "

5. The short facts of the case is as follows:

The revision petitioners/ plaintiffs filed the suit for recovery of the plaint schedule property from the respondents/ defendants and the same was allowed as per decree dated 22/10/1996. On the basis of the decree the property was delivered to the revision petitioners on 14/06/2000. According to the revision petitioners the survey number of the plaint schedule property in the plaint and decree in O.S.2452/1990 happened to be written by mistake as 237/2 instead of 238/1-A. In the interests of justice it was prayed before the court below that the plaint and decree may be corrected by inserting the correct Survey number.

6. The respondents opposed the application and contended that the prayer in the application cannot be allowed. The respondents have pleaded that their property is in survey No. 238/1-A and the revision petitioners have prosecuted the suit for the relief for the property in Sy. No. 237/2 and a decree was passed in accordance with the prayer of the revision petitioners thus they got the decree executed. Therefore there is no scope for change of survey number.

7. According to the revision petitioners the plaint schedule

property is the property delivered pursuant to the decree for which the suit was filed. They have no complaint that the delivered property is a different property. Plaintiffs' only grievance is that the survey number of the property was mistakenly shown as 237/2 instead of 238/1-A. This mistake had happened in the plaint when it was typed which was also entered in the decree. No correction was made at these periods. Only after the delivery of the property it was noted by the revision petitioners that there was a mistake in the survey number. If the grievance of the revision petitioners is true, it is certainly a simple typographical error. But I think that the stage at which the correction had to be carried out is over in this case. The suit was decreed. Subsequently on the basis of the decree the property was delivered. So after the delivery of the property the suit itself is not in existence and therefore the revision petitioners are not in a position to correct the same even if it is a mistake. Moreover it is a question of evidence as to what is the correct survey number of the plaint schedule property which was delivered over to them; is the survey number is 237/2 as stated in the plaint or 238/1-A as now alleged by the revision petitioners. The proper course open to the revision petitioners is to file a suit for correction of the survey number of the plaint schedule property. It is also open to the revision petitioners to file the suit before the appropriate court and obtain relief if the averments in the application that there was a mistake crept regarding the survey number are correct.

8. When a decree has been finally satisfied and discharged the court is functus officio and can no longer entertain any application for

amendment under section 152 of the C.P.C. . The court below will not be justified in making a correction long after satisfaction has been recorded and when nothing remains to be done and the decree has become dead.

9. Once full satisfaction of the decree has been entered the court becomes functus officio so far as that decree is concerned , It has nothing more to do and its authority is at an end. But the authority , which is so terminated is the authority to execute the decree and not the authority to correct accidental slips and errors or to review its own orders.

10. The principle to be applied in contingencies as in the present case is that once a decree gets fully satisfied and discharged, the decree becomes extinct and dead so far as the court is concerned, and unless there is scope for resuscitating the same in accordance with law and it gets resuscitated as such, neither the party could seek nor the court could indulge in any amendment of such a decree which has become non est in the eye of law. This appears to me the basic principle, which should govern the question of amendment of a decree Amendment presupposes the existence of a decree which is found to be incorrect or infirm or which is irreconcilable with the judgment and on those grounds or on some other analogous ground, amendment can be sought for. But when the decree as it stood has become extinct and dead in the eye of law by full satisfaction and discharge of the same the court will lack jurisdiction to order amendment of such a decree. It would be a different matter if by due process of law the recording of full satisfaction is nullified

and the decree stands resurrected. The remedial measure in such cases that may be resorted to is to have the order recording full satisfaction of the decree set aside and deleted by any process known to law and have the decree resuscitated and then only to seek the amendment. An amendment of the decree after satisfaction has been entered, is not permissible unless steps are taken to set aside the order recording the satisfaction thereby reopening the execution proceedings. Then the aggrieved parties can approach the trial court after amendment of the plaint and consequently to amend the decree.

11 In the decision reported in **Subramania Iyer V Joseph George 1959 KLT 165** this court dealt with a case where the boundaries of the schedule property alone had been wrongly described and the schedule was otherwise correct in so far as it related to survey number, extent, village etc. The question of correcting the plaint and the decree arose in the case for consideration. It was found that the language of Section 152 of the Code which enables the court to correct the clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. It does not exclude mistakes with regard to details of property also and there is no reason for restricting the scope of the Section to correction of errors made by the Court alone. Mistakes having their origin anterior to the suit and repeated in the decree can also be corrected by exercise of jurisdiction under Section 152. It was found that when there is defect in the description of the property owing to the accidental errors and the error

is repeated in the plaint and the decree, the Courts have ample powers to rectify such errors. Nothing prevents the Court from doing justice in an appropriate case where such mistakes arise. This Court further held that a suit for rectification of the instrument and decree is not the only remedy, an application for review may also be appropriate, that also is not the only way and will not be an obstacle for exercise of jurisdiction under Section 152 of the C.P.C.

12 In the decision reported in **Munuswami Pillai Vs. Mahdi Hussain Khan Sahib (A.I.R 1926 Madras 516)** it is held that *A court would not be justified in making a correction which involves the payment of a larger sum of money by one party to another, long after satisfaction has been recorded, and when nothing remains to be done and the decree has become dead.* It is held in the decision reported in **Daulat Ram Vs Baboo Ram A.I.R. (37) 1950 Pepsu 52 (C.N.21)** that *no application for setting aside the order recording the complete satisfaction of the decree having been made, the application for the amendment of the order giving mortgage on the judgment-debtor's land did not lie.*

13. In the light of the principles of law discussed, the question is not one of scope of the wide powers of court to order amendment. The question is as to when the power is available and how to be exercised. Courts are not vested with the powers to exercise them inexpediently leading to incongruous results.

14. In the facts and circumstances of the case I am of the view

that if really there is a grievance that in the plaint a mistake has been crept there should be some remedy for the revision petitioners. One remedy available to the revision petitioners is that they can file a review petition to reopen the execution proceedings, so that the pendency of the suit will continue so long as the execution proceedings are pending. Then the revision petitioners can move the court which passed the decree to make the correction. Alternatively the revision petitioners can also sue for rectification of the mistakes crept in the survey number of the plaint schedule property. These remedies are open to them and they are at liberty to avail the above said remedies to redress their grievance. In the circumstances no interference is possible in the impugned order.

With the above observations this Civil Revision Petition is disposed of

HARUN-UL-RASHID, JUDGE

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